

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

MICHAEL R. and SUSAN C. CLARK,

Plaintiffs,

v.

UNITED STATES OF AMERICA, and the  
DEPARTMENT OF TREASURY, by its  
agency, the INTERNAL REVENUE  
SERVICE,

Defendant.

Case No. 11-cv-00471 RS (NC)

**ORDER TO MEET AND CONFER**

Re: Dkt. Nos. 40, 41

This order addresses Defendant's Motion for Protective Order and to Quash Deposition Subpoenas and Plaintiffs' Motion for Extension of Deadlines. As Judge Seeborg noted in his November 6, 2012 order continuing the hearing on summary judgment, the parties failed to properly notice this discovery dispute, and as a result, Plaintiffs' proposed date to extend discovery has passed. Dkt. No. 47. Plaintiffs' motion is DENIED as moot. Because Judge Seeborg has allowed the parties to file supplemental briefing, the Court addresses Defendant's motion to quash the subpoenas of additional deponents and for a protective order.

**FAILURE TO COMPLY WITH LOCAL RULES AND STANDING ORDER**

Civil Local Rule 37-1(a) mandates a conference between counsel before presenting the Court with a discovery dispute: "The Court will not entertain a request or a motion to

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1 resolve a disclosure or discovery dispute unless, pursuant to Fed. R. Civ. P. 37, counsel  
2 have previously conferred for the purpose of attempting to resolve all disputed issues.” My  
3 Civil Standing Order further explains that the “conference” must be in person, or if counsel  
4 are outside the San Francisco Bay Area, must at least be by telephone. A mere exchange of  
5 letters, emails, or telephone messages does not satisfy this requirement. *See* Mag. Judge N.  
6 Cousins, Civil Standing Order, updated Aug. 24, 2012 (copy attached). If, after conferring,  
7 the parties cannot resolve a discovery dispute, they must submit a joint letter brief. *Id.*

8 Here, the parties have failed to meet and confer to resolve their dispute. Counsel for  
9 Defendant declares that she contacted Plaintiffs’ counsel to try to resolve the dispute prior  
10 to filing the motion. Plaintiffs allege that they sought an agreement and stipulation from  
11 defense counsel regarding the additional depositions. This type of incomplete exchange by  
12 counsel does not satisfy this Court’s requirement that parties meet and confer before  
13 submitting a discovery dispute. Defendant also failed to follow my standing order and  
14 improperly submitted a motion regarding this dispute, without notice and without setting a  
15 hearing.

16 Because of these deficiencies, the Court DENIES WITHOUT PREJUDICE  
17 Defendant’s motion for a protective order and to quash. The parties are ordered to meet  
18 and confer in accordance with my standing order. If, after meeting, the parties have not  
19 resolved these issues, they may resubmit the dispute to the court. In that event, Defendant  
20 must submit a letter brief, as described in my standing order, by November 14, 2012 at  
21 5:00 p.m. A hearing will be set for November 21, 2012 at 1:00 p.m. in Courtroom A, 15th  
22 Floor, U.S. District Court, 450 Golden Gate Avenue, San Francisco, California.

23 IT IS SO ORDERED.

24 Date: November 8, 2012

25   
Nathanael M. Cousins  
United States Magistrate Judge